United Nations CAT/C/63/D/731/2016

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 731/2016*, **

Communication submitted by:	X.
Alleged victims:	The complainant, his wife and their two minor children
State party:	Norway
Date of complaint:	29 February 2016 (initial submission)
Date of present decision:	4 May 2018
Subject matter:	Transfer of the complainant to France under the Dublin Regulation
Procedural issues:	Admissibility — exhaustion of domestic remedies; admissibility — manifestly unfounded
Substantive issues:	Non-refoulement; refugee status; torture
Articles of the Convention:	2 and 22

1.1 The complainant and his family members are nationals of the Congo. At the time of submission of the present communication, their request for asylum had been rejected in Norway and they were to be transferred to France within the framework of the Dublin Regulation. The complainant claims that their deportation would constitute a violation, by Norway, of articles 2 and 22 of the Convention.

1.2 On 16 March 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the complainant's request for interim measures. The State party transferred the complainant and his family to France on 21 March 2016.

1.3 On 27 July 2016, following the State party's request dated 13 May 2016, the Committee decided to consider the admissibility of the communication separately from its merits.

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodriguez-Pinzón, Bakhtiyar Tuzmukhamedov and Honghong Zhang. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa Guidelines), Sébastien Touzé did not participate in the examination of the communication.

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The facts as presented by the complainant

2.1 The complainant is Mr. X., a Congolese national, born in 1982. He submitted the complaint on his own behalf, and on behalf of his wife, born in 1987, their daughter, born in 2009, and their son, born in 2012.

2.2 The complainant claims that he has been an active member of the opposition party, the Pan-African Union for Social Democracy, since 2008, and that he was responsible for coordinating the youth advocacy activities in Kouilou region (Pointe-Noire) in the Congo. On 17 October 2015, he actively mobilized the youth to participate in a protest in Pointe-Noire, organized by a coalition of opposition parties, the Republican Front for the Respect of Constitutional Order and Democracy, against constitutional changes proposed by the Congolese authorities. The police violently dispersed the protesters, killing many. On 28 October 2015, military officers arrested the complainant and his wife. While the complainant's wife was released the next day, the complainant remained in detention until 29 October 2015 and was released only after a friend paid a bribe to a high-ranking officer. The complainant claims to have been regularly tortured while in detention. Upon release, the complainant's friends assisted him and his family to obtain French visas. The complainant provided false names to the French consular authorities to avoid the risk of being detained by the secret police before departure.

2.3 On 17 December 2015, the complainant and his family arrived in Norway and applied for asylum there, without travelling through France. On 20 February 2016, the Norwegian Directorate of Immigration rejected their applications and decided that the family should be transferred to France under the Dublin Regulation because France had granted them entry visas. France agreed to accept the complainant and his family. The complainant's request to the Immigration Appeals Board for the transfer to be deferred was rejected on 1 March 2016.

2.4 The complainant claims that, if transferred to France, he and his family might be handed over to the Congolese authorities because of the close political ties between the two countries. He also claims that many Congolese opposition leaders have been poisoned or allegedly died in France and he would not be safe there. He requested that his children's request for asylum should be processed in Norway since they had not been fingerprinted by the French authorities. However, the Norwegian authorities decided that it would be in the best interest of the children if they were transferred to France together with their parents.

The complaint

3. The complainant claims that the transfer to France would violate his and his family's rights under articles 2 and 22 of the Convention in view of their possible further deportation to the Congo or the threat to their lives in France.

State party's observations on admissibility

4.1 On 13 May 2016, the State party submitted its observations. It claims that the communication should be found inadmissible under article 22 of the Convention on the following grounds: it is an abuse of the right of submission and/or is manifestly unfounded; it is incompatible with the provisions of the Convention; and the complainant failed to exhaust all available and effective domestic remedies.

4.2 The State party advances three grounds for considering the communication to be manifestly unfounded and an abuse of the right of submission under article 22 (2) of the Convention. First, since the complainant's and his family's transfer to France on 21 March 2016, they have no further interest in the Committee's decision. Second, the complainant has failed to provide sufficient evidence for his allegations that Congolese opposition leaders are not safe in France and that, if transferred to France, it is likely that he would be handed over to the Congolese authorities. Third, the State party sees no reason to believe that France would not comply with its international obligations, including under the Convention.

4.3 In addition, the State party alleges that the communication is incompatible with the provisions of the Convention under article 22 (2) and rule 113 (c) of the Committee's rules of procedure. The State party is responsible only for acts or omissions under its jurisdiction. The complainant's allegations against France should be directed against France and not against Norway.

4.4 The State party alleges that the complainant has not met the requirement of article 22 (5) (b) of the Convention because he did not appeal against the decision of the administrative authorities before the domestic courts. The complainant could have appealed against the decision of the Immigration Appeals Board of 1 March 2016 refusing to defer the transfer to France; he could also have requested the said decision to be invalidated. He could have appealed against the decision of the Norwegian Directorate of Immigration dated 20 February 2016 to have him and his family transferred to France (pending before the Immigration Appeals Board at the time of the State party's submission) and appeal further the outcome, if need be. He could also have complained to the courts about a breach of his rights under the Convention.

4.5 Thus, the State party asks the Committee to find the communication inadmissible.

Complainant's comments on the State party's observations

5. On 18 July 2016, the complainant informed the Committee that he and his family applied for asylum in France upon their transfer from Norway. The outcome of the asylum procedure is still unclear. The complainant denies that his submission is an abuse of procedure and that it is manifestly unfounded. He states that the allegations raised in his original complaint remain valid. The complainant asks the Committee to underline to the State party that it should accept his and his family's asylum request because of the death threats to him in France and the likelihood of his deportation to the Congo.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies.

6.3 The Committee takes into account the observations of the State party that the complainant has not brought before the domestic courts the issues raised before the Committee in the context of the present communication. It notes that, according to the State party, the complainant could, in particular, have appealed against the decision of the Immigration Appeals Board of 1 March 2016 refusing to defer the transfer to France; he could also have requested that the decision be invalidated; and he could have appealed against the decision of the Norwegian Directorate of Immigration of 20 February 2016 to have him and his family members transferred to France, and appeal further against the outcome of this appeal. The Committee notes that the complainant does not refute these observations and does not deny the fact that he has not appealed the administrative decisions in court. Neither does he provide any comments on this point or identify grounds that could render domestic remedies ineffective. In such circumstances and taking into account the provisions of its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (paras. 31, 34–35), the Committee finds the present communication inadmissible under article 22 (5) (b) of the Convention.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (b) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.